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No. 84-822

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, WALTER E. HELLER INTERNATIONAL CORPORATION AND RONALD J. GRAYHECK,

Petitioners,

v.

HAROCO, INC., A CORPORATION, ROMAN CERAMICS, INC., A CORPORATION, CALIFORNIA ORIGINALS, INC., A CORPORATION, AND MIKE WAYNE DISTILLED PRODUCTS CO., A CORPORATION,

Respondents.

REPLY BRIEF

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
ARGUMENT	1
A. Respondents And Amici Attempt To Rebut Arguments Petitioners Do Not Assert	1
B. Petitioners Do Not Contend That Only "Managers" Can Violate RICO	5
C. Petitioners' Construction Of Section 1964(c) and 1962(c) Will Not Undermine Criminal RICO Prosecutions Or Legitimate State Amici Interests	8
D. Respondents And Amici Fail To Refute Petitioners' Actual Argument Regarding The Statutorily Prescribed Civil RICO Injury	15
CONCLUSION	18

TABLE OF AUTHORITIES

Cases

	PAGE
Bankers Trust Co. v Rhoades, 741 F.2d 511 (2d Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3367 (U.S. Oct. 24, 1984) (No. 84-657)	3
Bennett v. Berg, 710 F.2d 1361 (8th Cir.), *cert. denied*, 104 S.Ct. 527 (1983)	12, 14
Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980)	16
Director, Office of Workers' Compensation Programs, United States Department of Labor v. Forsyth Energy, Inc., 666 F.2d 1104 (7th Cir. 1981)	7
Mohasco Corp. v. Silver, 447 U.S. 807 (1980)	15
Russello v. United States, 104 S.Ct. 296 (1983)	5, 16
United States v. Bagnariol, 665 F.2d 877 (9th Cir. 1981), *cert. denied*, 456 U.S. 962 (1982)	10
United States v. Carter, 721 F.2d 1514 (11th Cir.), *cert. denied*, 105 S.Ct. 89 (1984)	13, 14
United States v. Cauble, 706 F.2d 1322 (5th Cir. 1983), *cert. denied*, 104 S.Ct. 996 (1984)	13, 14
United States v. Dennis, 458 F.Supp. 197 (E.D.Mo. 1978)	12, 13
United States v. Elliott, 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978)	10, 13
United States v. Kovic, 684 F.2d 512 (7th Cir.), *cert. denied*, 459 U.S. 972 (1982)	10
United States v. Mandel, 591 F.2d 1347, *aff'd en banc* 602 F.2d 653 (4th Cir. 1979), *cert. denied*, 445 U.S. 961 (1980)	12, 14

United States v. Mazzei, 700 F.2d 85 (2d Cir.), *cert. denied*, 461 U.S. 945 (1983)	10
United States v. Nerone, 563 F.2d 836 (7th Cir. 1977), *cert. denied*, 435 U.S. 951 (1978)	14
United States v. Nunez, 573 F.2d 769 (2d Cir.), *cert. denied*, 436 U.S. 930 (1978)	7
United States v. Scotto, 641 F.2d 47 (2d Cir. 1980), *cert. denied*, 452 U.S. 961 (1981)	12, 13
United States v. Stofsky, 409 F.Supp. 609 (S.D.N.Y. 1973), *aff'd*, 527 F.2d 237 (2d Cir. 1975), *cert. denied*, 429 U.S. 819 (1976)	12, 13
United States v. Turkette, 452 U.S. 576 (1981)	10, 16
United States v. Welch, 656 F.2d 1039 (5th Cir. 1981), *cert. denied*, 456 U.S. 915 (1982)	10
United States v. Zang, 703 F.2d 1186 (10th Cir. 1982), *cert. denied*, 104 S.Ct. 103 (1983)	9
United States v. Zielie, 734 F.2d 1447 (11th Cir. 1984), *cert. denied*, 105 S.Ct. 957 and 105 S.Ct. 1192 (1985)	9

Statutes

18 U.S.C. §1961	11
18 U.S.C. §1962	*passim*
18 U.S.C. §1963	9
18 U.S.C. §1964	*passim*
Pub. L. No. 91-452, 84 Stat. 947	10
Ariz. Rev. Stat. §13-2301	11
Ariz. Rev. Stat. §13-2312	11
Ariz. Rev. Stat. §13-2314	11
Idaho Code §18-7805	12
N.M. Stat. §30-42-6	12
Utah Code §76-10-1605(1)	12

Treatises

Sands, *Sutherland Statutory Construction* 7

Commentary

ABA, *A Survey On Racketeer Influenced And Corrupt Organizations (RICO) Laws* (1983) 11

Blakey, *Materials On RICO: Criminal Overview,* Cornell Institute On Organized Crime (1980) .. 11, 12

Miscellaneous

Trade Reg. Rep. (CCH) ¶50,452 (Sept. 6, 1983) .. 9

S. Rep. No. 617, 91st Cong. 1st Sess. (1969) ... 16

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REPLY BRIEF

ARGUMENT

A. Respondents And Amici Attempt To Rebut Arguments Petitioners Do Not Assert

Although the Respondents and Amici[1] assert a host of purported reasons why Petitioners' position should not be

1. Amicus curiae briefs were filed on behalf of: (1) the States of Arizona, Alaska, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming ("States"); (2) County

(Footnote continued on following page)

adopted by this Court, most of them are simply not germane to arguments made by Petitioners, and accordingly need not and will not be addressed.[2] However, to avoid confusion regarding the arguments Petitioners have made, Petitioners will identify the arguments which Respondents and Amici erroneously attribute to them.[3]

(footnote 1 continued)

of Suffolk, New York ("County"); (3) Cities of Chicago, New York and Philadelphia ("Cities"); (4) State of New York ("New York"). In addition, motions for leave to file briefs were filed by John Grado ("Grado") and The Interinsurance Exchange of the Automobile Club of Southern California ("Interinsurance") to which Petitioners have objected but which had not been ruled upon at the time of this Brief's printing.

In support of Petitioners an amicus brief was filed by the American Bankers Association. Further, the following have filed motions to file Amici briefs in *Sedima* in support of the respondents in that case, who take a position similar but not identical to that of Petitioners in this case: (1) The American Institute Of Certified Public Accountants; (2) The Securities Industry Association; and (3) The Alliance Of American Insurers, The American Council Of Life Insurance, The American Insurance Association, The National Association Of Independent Insurers, and State Farm Insurance Companies.

2. Those arguments which do pertain to Petitioners' position are discussed in Sections B and C, *infra*.

3. Respondents' contrived claim that Petitioners' argument is not properly before this Court is totally baseless. A review of the Petition For Certiorari and the question presented readily reveals that Section 1964(c) cannot be interpreted absent an interpretation of Section 1962. (Petition, pp. 7-10). Interpreting only the "by reason of" clause in Section 1964(c) and not "by reason of a violation of section 1962" as Respondents suggest, is fanciful. Likewise, a review of the record in the Seventh Circuit demonstrates that Petitioners' argument, both below and in this Court, is directed to interpreting the statutorily prescribed injury for which RICO's civil remedies are available. (747 F.2d 384, 386, 392-399; App. A-4, A-17 to A-30). That interpretation, by definition, includes an understanding of the substantive RICO violation without which there is no injury entitling a plaintiff to civil damages.

First, almost without exception, the briefs filed in opposition to Petitioners assail the Second Circuit's analysis in *Bankers Trust Co. v. Rhoades*, 741 F.2d 511 (2d Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3367 (U.S. Oct. 24, 1984) (No. 84-657). (Respondents Brief, pp. 16-18; States Brief, p. 9; Grado Brief, pp. 10-11; Cities Brief, p. 5; County Brief, p. 10; Interinsurance Brief, p. 8). Yet, Petitioners do not subscribe to the *Bankers Trust* court's position that the injury from the predicate acts must always be different from an injury resulting from the pattern of racketeering activity.[4] *See* initial Petitioners' Brief, p. 29. Nor is any aspect of the Petitioners' argument dependent upon the *Bankers Trust* analysis.

Second, Petitioners do not claim that a competitive injury must be suffered in order to recover under civil RICO. Nonetheless, Respondents and Amici States and Grado criticize the so-called competitive injury argument. (Respondents Brief, pp. 19-20; States Brief, p. 7; Grado Brief, pp. 7-8).

Third, notwithstanding Respondents' erroneous suggestion, Petitioners do not contend that the enterprise must benefit from or further its business as a result of the racketeering activity in order to be liable under RICO. (Respondents Brief, p. 13; New York Brief, p. 9).

Fourth, despite Petitioners never having asserted an argument requiring an "organized crime" link of any kind, the deficiencies of such an argument are addressed by the Respondents and several Amici. (Respondents Brief, pp. 21-25; Grado Brief, pp. 6-7; States Brief, p. 6).

Finally, even though Petitioners expressly disclaim reliance on the so-called garden-variety fraud argument[5]—i.e.,

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4. Petitioners also part company on this issue with amicus American Bankers Association ("ABA") which filed a brief in support of Petitioners since, unlike the Petitioners, the ABA endorsed the *Bankers Trust* holding. (ABA Brief, p. 4).

5. *See* Petitioners' initial Brief, p. 25.

that the federalizing of all garden-variety state fraud cases should not be permitted—Amici included a discussion of that argument in their briefs. (States Brief, pp. 10-11; County Brief, p. 9).

What is perhaps most telling about all the briefs opposing Petitioners is their conspicuous failure to confront, let alone refute, the validity of the Petitioners' essential argument that the plain meaning of the statute requires a civil RICO plaintiff to allege and ultimately prove that the alleged predicate offenses were integrally related to the management of the enterprise's affairs. Respondents, for example, devote less than two pages of their entire brief to the Seventh Circuit's decision (Respondents Brief, pp. 26-27) but devote eleven pages to the District Court decision which it reversed (Respondents Brief, pp. 15-26). In like manner, the only responsive discussion of Petitioners' argument found in the States' twenty-seven page brief is contained in a footnote (States Brief, p. 12, n.12). The position of the New York Amicus is totally incongruous. In its brief in the *Sedima* case, New York expressly criticized *Haroco* for not requiring "injury" from *all* of the elements of a RICO violation. (*Sedima* New York Brief, p. 20). Now, in its brief in *Haroco*, New York turns 180 degrees and endorses the *Haroco* holding.[6]

The reason that Respondents and Amici go to such lengths to misstate Petitioners' position or avoid confronting Petitioners' statutory construction is obvious. The soundness in the Petitioners' position is that it is consistent with and

6. The intellectual inconsistency and shifting support and opposition based upon whatever best serves its individual interest is also evidenced by the Amici' repeated attempts to inject RICO issues of interest to them but not before the Court in this case. For example, the person-enterprise issue and the issue of whether private equitable relief is available are not remotely related to the issue on which this Court granted certiorari. (States Brief, p. 5, n.9, p. 13, n.13).

promotes the language, purpose and legislative history of this statute, not one side or the other of the judicially polarized issue which the Court addresses in this case.

B. Petitioners Do Not Contend That Only "Managers" Can Violate RICO

Unable to openly confront Petitioners approach to construing the plain meaning of Section 1962(c), Respondents misstate the construction which Petitioners urge this Court to adopt, as follows:

> Petitioners' argument that there is no RICO violation unless the person committing the crimes "managed" the enterprise, would read Section 1962(c) as though it provided: any person who "manages or directs the affairs of an enterprise".

(Respondents Brief, p. 6). Respondents' quotation from *Russello v. United States*, 104 S.Ct. 296, 300 (1983), "the short answer is that Congress did not write the statute that way," decisively responds to Respondents' mischaracterization of Petitioners' argument but not to their actual argument. The short answer to Respondents' assertion is that Petitioners do not contend that only managers can violate RICO.

Rather, Petitioners contend that there must be a nexus between the commission of the underlying predicate offenses and the management of the enterprise's affairs. Or, stated differently, the pattern of racketeering must be integrally related to the enterprise's affairs. This construction fully satisfies the language's plain meaning and is consistent with the statute's purpose and legislative history. Applying this construction, a manager who is directing an enterprise's affairs through the means of the predicate offenses most certainly violates Section 1962(c). However, so would a non-managerial employee who participates in the predicate acts which are the means by which the enterprise's affairs are being managed.

Contrary to Respondents' suggestion, the statutory terms "employed by," "associated with," "participate," and "directly and indirectly" are not overlooked by Petitioners. (Respondents Brief, p. 6). Rather, it is Respondents who ignore that Section 1962(c) uses the term "conduct" twice, first as a verb and then as a noun:

> It shall be unlawful for any person employed by or associated with any enterprise . . . to *conduct* or participate, directly or indirectly, in the *conduct* of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. §1962(c) (emphasis added). It is the second use of the word "conduct," as a noun, to which "participate" and "directly or indirectly" relate. Unquestionably, one can participate in the management of or the direction of the enterprise's course of affairs without being a "manager." Likewise, that participation can be direct or indirect. Thus, all of the terms used in the statute are given significance under the Petitioners' construction of conduct as both a verb and a noun.

In contrast, Respondents' suggested reading of "conduct" as meaning "any degree of participation" can only apply to "conduct," used as a verb, not as a noun. (Respondents Brief, pp. 7-8). Simply put, it would be inane and redundant to prohibit participation in any "degree of participation of the enterprise's affairs." Similarly, the interpretation offered by Amicus Interinsurance, "the notion of execution or carrying out of tasks," (Interinsurance Brief, p. 14) can only apply to the first "conduct." Otherwise, the Section would be interpreted as prohibiting the " 'carrying out of tasks' or participating in the 'carrying out of tasks.' " If all that is required is participation or carrying out of tasks in the enterprise's affairs through a pattern of racketeering activity, the second use of the word "conduct" as a noun is superfluous and duplicative of the phrase "of such enterprise's affairs." Such a construction is, of

course, contrary to the fundamental rule of statutory construction that each clause and word should be given effect in a common sense fashion. *See generally* 2A Sands, *Sutherland Statutory Construction*, §46.06.

Hence, by employing the concept of management as the usual and ordinary meaning of "conduct," the second use of the word "conduct" as a noun serves a logical purpose in the clause—one which requires that the pattern of racketeering activity be integrally related to the enterprise's affairs or the means by which the affairs of the enterprise are managed. Thus, by defining "conduct," to include the concept of management, each meaning of "conduct" in Section 1962(c) can be defined harmoniously[7] to serve the statutory purpose.

In sum, and contrary to Respondents' claim, Petitioners' construction of Section 1962(c) will not "insulate those low level criminals who most frequently commit RICO's predicate offenses." (Respondents Brief, p. 3). A person is not immune to a civil RICO claim merely because he is not in a position of management or authority. If the racketeering activities in which a nonmanagerial person participates are the means by which the enterprise is being managed, he could nevertheless be subject to a civil RICO claim.[8]

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7. The same term should not be construed differently within the same statute. *See* 2A Sands, *Sutherland Statutory Construction* §46.06. *See, e.g., Director, Office of Workers' Compensation Programs, United States Department of Labor v. Forsyth Energy, Inc.*, 666 F.2d 1104, 1107-08 (7th Cir. 1981); *United States v. Nunez*, 573 F.2d 769, 771 (2d Cir.), *cert. denied*, 436 U.S. 930 (1978).

8. Petitioners submit that, because the alleged predicate acts (mail fraud in connection with ANB's definition of prime rate) are not alleged to relate to the management of ANB's or Heller's affairs and because Grayheck is not alleged to have managed or directed ANB's affairs by virtue of the alleged fraudulent prime rates, the District Court's dismissal of the Complaint should be sustained. Respondents, in contrast, contend that even if Petitioners prevail as

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C. Petitioners' Construction Of Section 1964(c) And 1962(c) Will Not Undermine Criminal RICO Prosecutions Or Legitimate State Amici Interests

Respondents and Amici alike suggest *in terrorem* that a multitude of untoward effects on criminal RICO prosecutions will result if Petitioners' position is adopted by this Court, including: (a) the creation of an insurmountable burden imposed on prosecutors to prove the integral relationship of the predicate acts to the management of the enterprise's affairs (Respondents Brief, pp. 10-11); (b) the exoneration of persons previously subject to criminal RICO violations (Respondents Brief, p. 13; Interinsurance Brief, p. 17); (c) "eliminat[ing] the attack on organized criminal behavior accomplished by §1962(c)" (Grado Brief, p. 24); and (d) the exemption of bribery and "looting [of] an enterprise from within" as violations of Section 1962(c) (Respondents Brief, p. 12). It is for these and related reasons, they argue, that lower courts have rejected the "integral relationship" nexus between the predicate acts and the management of the enterprise's affairs in the criminal RICO setting.[9]

This parade of imaginary horribles is precisely that—imaginary. To the extent RICO has been violated, Respondents' so-called "quantitative and qualitative assessment of

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(footnote 8 continued)

to the meaning of Section 1962(c), their pleading is sufficient to withstand a motion to dismiss.

The issue presented to this Court, however, is one of statutory construction regarding the meaning of Section 1964, and by necessity Section 1962, and thus, this dispute as to Respondents' particular allegations need not be resolved by this Court. Instead, upon clarifying the meaning and scope of the type of injury required to be pleaded under Section 1964, a remand is appropriate to allow the District Court to determine, in light of this Court's opinion, whether the Complaint alleges a sufficient injury.

9. *See* Respondents Brief, pp. 13-14; Interinsurance Brief, p. 13; States Brief, p. 12.

both the person's racketeering participation and the enterprise's other . . . activities," for example, does not impose the onerous burden Respondents depict (Respondents Brief, p. 11). Indeed, such an assessment is necessarily required in order to invoke Section 1963, the criminal forfeiture RICO provision, since it is only the defendant's interest in the enterprise which is subject to forfeiture, and not the entire enterprise. 18 U.S.C. §1963. *See, e.g., United States v. Zielie*, 734 F.2d 1447, 1459 (11th Cir. 1984), *cert. denied*, 105 S.Ct. 957 and 105 S.Ct. 1192 (1985); *United States v. Zang*, 703 F.2d 1186, 1193-1194 (10th Cir. 1982), *cert. denied*, 104 S.Ct. 103 (1983).

Absent the objective of forfeiture, a criminal RICO prosecution is pointless since the substantive criminal statutes with which to prosecute the offender for the predicate acts are readily effective and nothing is gained by including a RICO violation in the indictment. Hence, the Department of Justice Guidelines advise Government attorneys against adding a RICO count which merely duplicates a traditional criminal offense "unless it serves some special RICO purpose . . . [or] attack[s] the activity which Congress most directly addressed—the infiltration of organized crime into the nation's economy." Trade Reg. Rep. (CCH) ¶50,452 (Sept. 6, 1983).

Similarly, the Government's ability to prosecute "inside looters" or embezzlers for RICO will not be diminished by requiring the integral relationship between the management of enterprise's affairs and the predicate acts. Respondents' contention to the contrary is premised on the misapprehension that Section 1962(c) is not directed to the economic infiltration of enterprises by organized crime. (Respondents Brief, p. 11). It is no accident that Respondents fail to cite any authority in support of their proposition. Indeed, even the Amici do not dispute that RICO's objective was to eradicate and deter economic infiltration or penetration of businesses. (*See* Grado Brief, p. 16; Cities Brief, p. 7; States Brief, p. 12). Embezzlement by a sole employee, therefore,

unrelated to some larger scheme to take over the business, is simply not within the scope of what Congress intended when it enacted RICO. That conclusion, however, leaves fully intact both the substantial civil and criminal remedies which the victim or the Government can employ under state or federal embezzlement statutes. *See* Pub. L. No. 91-452, 84 Stat. 947 (1970).

Moreover, except for a single employee's embezzlement unrelated to a larger plan, a RICO prosecution would still be available even if the predicate acts are not related to the management of the corporation. RICO's "enterprise" requirement can be fulfilled by a de facto or surrogate enterprise instead of the victim corporation.[10] And as to that enterprise, which would include for example the participants scheming to loot the company, the individual predicate acts of embezzlement would, in fact, be integrally related to the management of the de facto enterprises.[11]

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10. *See, e.g., United States v. Elliott*, 571 F.2d 880, 898 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978). *See also United States v. Turkette*, 452 U.S. 576, 583 (1981); *United States v. Mazzei*, 700 F.2d 85, 88 (2d Cir.), *cert. denied*, 461 U.S. 945 (1983); *United States v. Bagnariol*, 665 F.2d 877 (9th Cir. 1981), *cert. denied*, 456 U.S. 962 (1982).

11. Respondents' purported examples of the "Government's recent successes" in using RICO in a criminal context which would not have been possible under Petitioners' construction, *United States v. Kovic*, 684 F.2d 512 (7th Cir.), *cert. denied*, 459 U.S. 972 (1982); *United States v. Welch*, 656 F.2d 1039 (5th Cir. 1981), *cert. denied*, 456 U.S. 915 (1982), do not support their position. (Respondents Brief, p. 13, n.14). Rather, in both instances, the evidence was such that the predicate acts were very closely related to the management of the relevant enterprises, i.e., the Sheriff's Office in *Welch* and the Police Department in *Kovic*. Apparently, Respondents confuse the concept of "integrally related to the management of the enterprise's affairs" with providing a benefit to the enterprise. Further, in both *Kovic* and *Welch*, the prosecution could have alleged a de facto enterprise to satisfy the enterprise element since neither Kovic nor Welch acted alone.

Further, the professed concern in the States' Amici Brief, on behalf of thirty-four states, that federal decisions are being used to challenge state RICO statutes, (States Brief, p. 2) does not withstand scrutiny. Indeed, only twenty-two of the thirty-four states joining in the brief have enacted RICO statutes. (States Brief, p. 2). Moreover, most of the states with a RICO statute have significantly not adopted the federal statute verbatim. *See, e.g.*, ABA, *A Survey On Racketeer Influenced And Corrupt Organizations (RICO) Laws* (1983). Rather, a provision which frequently varies in the state RICO statutes from the federal counterpart is the civil remedy. Illustrative is Arizona's RICO statute, one of the first state RICO statutes which provides:

> A person who *sustains injury* to his person, business or property *by racketeering as defined by §13-2301, subsection D, paragraph 4* . . . may file an action in superior court for the recovery of treble damages . . .

Ariz. Rev. Stat. §13-2314 (emphasis added). Section 13-2301, subsection D, paragraph 4, Arizona's equivalent of federal Section 1961, defines "racketeering" as any act involving an enumerated list of underlying predicate offenses. Thus, in marked contrast to Section 1964 of the federal statute, which requires an injury by reason of Section 1962[12] not Section 1961, the comparable state RICO statute requires only that injury be caused by the predicate acts, the same position taken by the Seventh Circuit, Respondents, and Amici.[13] *See*

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12. Arizona's corresponding substantive RICO provision is Section 13-2312 which provides, in pertinent part, as follows:

> A person commits illegally conducting an enterprise if such person is employed or associated with any enterprise and conducts or participates in the conduct of such enterprise's affairs through racketeering.

Ariz. Rev. Stat. §13-2312.

13. It is also noteworthy that Professor G. Robert Blakey assisted the Arizona State Legislature in drafting its RICO statute.

(Footnote continued on following page)

also Idaho Code §18-7805; N.M. Stat. §30-42-6; Utah Code §76-10-1605(1).

The Amici, States, New York, and Interinsurance also claim that Petitioners' "integral relationship" test should be rejected because similar arguments have been rejected by the courts of appeals. (States Brief, p. 12; Interinsurance Brief, p. 13; New York Brief, pp. 8-10). While some courts have apparently indicated that a lesser relationship between the enterprise and the predicate acts will suffice,[14] others have adopted Petitioners' position. *See, e.g., Bennett v. Berg,* 710 F.2d 1361, 1364 (8th Cir.), *cert. denied,* 104 S.Ct. 527 (1983) ("A defendant's participation must be in the conduct of the affairs of a RICO enterprise, which ordinarily will require some participation in the operation or management of the enterprise itself."); *United States v. Mandel,* 591 F.2d 1347, 1375, *aff'd en banc,* 602 F.2d 653 (4th Cir. 1979), *cert. denied,* 445 U.S. 961 (1980) (" 'conduct or participate' language in §1962(c) required some involvement in the operation or management of the business");[15] *United States v.*

(footnote 13 continued)

See Blakey, *Materials On Rico: Criminal Overview,* Cornell Institute On Organized Crime, vol. 1, p. 5 (1980). If anyone, Professor Blakey, who is also credited with assisting in the preparation of the States' Brief, knows that the *in terrorem* argument as to the effect on state RICO statutes is without merit.

14. *See e.g., United States v. Stofsky,* 409 F.Supp. 609, 613 (S.D. N.Y. 1973), *aff'd,* 527 F.2d 237 (2d Cir. 1975), *cert. denied,* 429 U.S. 819 (1976); *United States v. Scotto,* 641 F.2d 47 (2d Cir. 1980), *cert. denied,* 452 U.S. 961 (1981).

15. Aware of the Eighth and Fourth Circuits' disagreement with the Second and Fifth Circuits' position, Amici Interinsurance attempts to dilute the strength of the *Bennett* and *Mandel* decisions by suggesting that the en banc per curiam opinion in *Mandel,* 602 F.2d 653 (4th Cir. 1979), changed the holding on the requisite nexus of Section 1962(c). (Interinsurance Brief, p. 12, n.11). This is not accurate. The en banc per curiam opinion simply affirmed all convictions. The discussion of the Section 1962(c) nexus, however, occurred with respect to the acquittal on Count 23. 591 F. Supp. 1374-1376.

Dennis, 458 F.Supp. 197, 199 (E.D.Mo. 1978) ("The mere fact that defendant is employed by the enterprise and collects unlawful debts on the premises of the enterprise . . . does not establish that the defendant participated in the conduct of the enterprise's affairs through the collection of the debts.").

Moreover, none of the decisions offered by the Amici have arisen in a context in which the court was squarely faced with the task of defining the requisite degree of relationship, as is this Court. Rather, those decisions arose in contexts in which the RICO statute was asserted to be unconstitutionally vague,[16] or which involved a conspiracy,[17] or where, because of the particular facts, it was unnecessary to decide the degree of relationship required.[18] Indeed, in one of the most recent cases marshalling the decisions on this point, the Fifth Circuit emphasized that it had not previously formulated a test to determine when the requisite nexus between the enterprise and the racketeering activity had been satisfied. *United States v. Cauble,* 706 F.2d 1322, 1332 (5th Cir. 1983), *cert. denied,* 104 S.Ct. 996 (1984). *Accord United States v. Carter,* 721 F.2d 1514, 1527 (11th Cir.), *cert. denied,* 105 S.Ct. 89 (1984).

A review of the lower court decisions on this point displays a profound lack of consistency among or within the Circuits and affords no facile solution to the issue before this Court.[19] The one pervasive holding in those cases, however,

16. *See, e.g., United States v. Stofsky,* 409 F.Supp. 609, 613 (S.D. N.Y. 1973), *aff'd,* 527 F.2d 237 (2d Cir. 1975), *cert. denied,* 429 U.S. 819 (1976).

17. *See, e.g., United States v. Elliott,* 571 F.2d 880, 903 (5th Cir.), *cert. denied,* 439 U.S. 953 (1978).

18. *See, e.g., United States v. Scotto,* 641 F.2d 47, 54 (2d Cir. 1980), *cert. denied,* 452 U.S. 961 (1981).

19. *Compare United States v. Scotto,* 641 F.2d 47, 54 (2d Cir. 1980), *cert. denied,* 452 U.S. 961 (1981) and *United States v. Cauble,*

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is that RICO prohibits conducting an enterprise *through* a pattern of racketeering activity and not simply the acts of racketeering themselves. *United States v. Cauble*, 706 F.2d 1322, 1332 (5th Cir. 1983), *cert. denied*, 104 S.Ct. 996 (1984), ("[T]here must be a nexus between the enterprise, the defendant, and the pattern of racketeering activity."); *United States v. Nerone*, 563 F.2d 836, 851-852 (7th Cir. 1977), *cert. denied*, 435 U.S. 951 (1978), (Government's case failed when Government did not attach significance to the use of the word "through" contained in the statute and accordingly did not prove the connection between the racketeering activities and the affairs of the enterprise).

Respondents, however, conclude that "[t]he only necessary nexus between the racketeering activities and the enterprise's affairs is that the predicate acts take place in the course of the offender's participation in the enterprise." (Respondents Brief, pp. 12-13). Superficially, Respondents' description of the requisite nexus might be an accurate paraphrase of Section 1962(c) but for their disingenuous omission of the word "conduct." To put back in what Respondents improperly leave out, Respondents conclusion would correctly require "that the predicate acts take place in the course of the offender's participation in the *conduct* of the enterprise." Respondents' elision notwithstanding, the word cannot be lifted from the statute.

Ironically, Respondents charge that Petitioners' interpretation of Section 1962(c) is "backwards." (Respondents Brief, p. 13). But, in the very next sentence in their Brief, Respondents unqualifiedly state that "RICO applies where

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(footnote 19 continued)

706 F.2d 1322, 1333 (5th Cir. 1983), *cert. denied*, 104 S.Ct. 996 (1984) *with Bennett v. Berg*, 710 F.2d 1361, 1364 (8th Cir.), *cert. denied*, 104 S.Ct. 527 (1984) and *United States v. Mandel*, 591 F.2d 1347, 1375-1376, *aff'd en banc*, 602 F.2d 653 (4th Cir. 1979), *cert. denied*, 445 U.S. 961 (1980). *See also United States v. Carter*, 721 F.2d 1514, 1527 (11th Cir.), *cert. denied*, 105 S.Ct. 89 (1984).

the enterprise is the means by which the person engaged in the racketeering activity." (Respondents Brief, p. 13). The statute's language, however, simply cannot be reconciled with that statement. Rather, RICO applies where the racketeering acts are the means by which the enterprise's affairs are conducted according to the language of the statute.

D. Respondents And Amici Fail To Refute Petitioners' Actual Argument Regarding The Statutorily Prescribed RICO Injury

RICO is undeniably a controversial statute among the bar, bench, academia, private interest groups and the business community at large, concerning as it does organized crime, treble damages, and the federalization of heretofore common law state claims. That controversial nature has apparently caused courts, including the *Sedima* and *Haroco* courts, to lose sight of basic statutory construction rules. Objectively applied to Section 1964, however, those rules dictate a result which is uncomplicated, intelligible, workable, and consistent with the objectives sought to be achieved by Congress.

Following this Court's established rules of statutory construction, the plain meaning of the relevant statutory language is first considered; next, the legislative history is examined; and finally, consideration is given to any policy consideration in favor of a less literal reading of the statute. *Mohasco Corp. v. Silver*, 447 U.S. 807, 815 (1980).

Section 1964 unequivocally affords a civil remedy to persons damaged "by reason of a violation of section 1962." Section 1962, in turn, specifies the three categories of activities which are prohibited, and if performed, will constitute a "violation of Section 1962." The category delineated in Section 1962(c) prohibits anyone associated with an enterprise from conducting, or participating in the conduct of the enterprise's affairs through a pattern of racketeering activity. Defining Section 1962(c)'s words by reference to the statu-

tory definitions or, in the absence thereof, by using the usual and common sense dictionary definitions in order to give effect to each word results in a construction that: Section 1962(c) is violated when a person associated with an enterprise commits two or more of the predicate acts and those predicate acts are the means by which the enterprise's affairs are being managed, or integrally related thereto. Any other interpretation of Section 1962(c) can only be achieved if one or more words of the statute is rendered superfluous or meaningless or given an unconventional meaning.

RICO's legislative history, although expansive with respect to many of its provisions and its overriding purpose, particularly those of a criminal nature, is nonexistent with respect to the particular questions presented in this case. On the other hand, there is not "a clearly expressed" contrary legislative intent to warrant reconsideration of the plain meaning of the statutory language.[20] Congress' purpose was to provide a weapon with which to fight "the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S. Rep. No. 617, 91st Cong. 1st Sess. 76 (1969). *See also Russello v. United States*, 104 S.Ct. 296, 303 (1983); *United States v. Turkette*, 452 U.S. 576, 591 (1981). Petitioners' construction of Section 1962(c)'s plain meaning unquestionably affirms that purpose. If the racketeering activity is not integrally linked to the management of the enterprise's affairs, the danger of infiltration is not present. Further, to the extent the racketeering acts are not related to the management of the enterprise, prior existing state and federal statutes remain an effective arsenal with which to combat the unlawful acts.

Finally, no reason has been suggested either by the Seventh Circuit, the Respondents or the Amici, to justify an interpretation other than the plain meaning of Sections

20. *See Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

1964 and 1962. The Seventh Circuit's test of proximate causality to the predicate acts, but not the substantive violation of Section 1962(c), effectively emasculates the substantive RICO provision for purposes of civil RICO claims and expands the scope of RICO beyond what is required to realize its objectives. Moreover, the entire meaning and purpose of RICO is perverted when predicate offenses that happen to be committed in a business setting, as alleged in this case, are alchemized into federal claims for treble damages and attorneys fees.

Petitioners' construction of Section 1962(c)—that a violation occurs when a person commits or participates in the commission of predicate acts which are integrally related to the management of the enterprise's affairs—is not, of course, a scientific measuring device that will rotely measure the presence or absence of prohibited substance. It is, however, a workable and definitive standard to provide federal courts with the necessary factors to apply to particular facts presented on a case-by-case basis. To reject this construction because it does not provide absolute contours which, in myriad fact patterns will foreordain RICO's applicability, makes little sense in light of the inimical alternatives which unduly expand or restrict RICO's scope.

Accordingly, this Court should construe Section 1964 to require a civil RICO claimant to allege injury by reason of a violation of Section 1962. In turn, Section 1962 can only be construed to require the defendant to have acquired, maintained control or an interest in, or conducted the affairs of an enterprise through the commission of the statutorily prescribed offenses. In particular, if a defendant is charged with having conducted or participated in the conduct of the affairs of an enterprise through the offenses under Section 1962(c), those offenses must be integrally related to the management of the enterprise's affairs. Absent such a nexus, a violation of the underlying offenses may have occurred but a RICO violation has not.

CONCLUSION

The Order of the Court of Appeals for the Seventh Circuit should be reversed and the District Court's Order affirmed, dismissing the Respondents' Amended Complaint for failure to state a claim upon which relief can be granted.

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